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W.P(MD) No.13784 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :27.07.2023

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**THE HONOURABLE MR.JUSTICE P.DHANABAL**

W.P(MD)No.13784 of 2021

M.Maduraesan

... Petitioner

-Vs-

1. The Superintendent of Police  
Ramanathapuram District  
Ramanathapuram

2. The Inspector of Police  
Bazaar Police Station,  
Ramanathapuram District

3.A.Ganesan

... Respondents

**PRAYER:-** Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the respondents 1 and 2 to provide adequate police protection to the petitioner and his family members to install fencing in his property situated at Survey No.58, Ward -B, Block-8 in an extent of 0.0620 Hectares situated at South Muniyasamy Kovil Street, Ramanathapuram City by considering the petitioner's representation dated 26.06.2021 within the time stipulated by this Court.

For Petitioner

: Mr. T.Thirumurugan

For R1 and R2

: Mr. R.M.Anbunithi  
Additional Public Prosecutor

For R3

: Mr.J.Barathan



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**ORDER**

This Writ Petition has been filed seeking for issuance of Writ of Mandamus to direct the first and second respondents to provide adequate police protection to the petitioner and his family members to install fencing in his property situated at Survey No.58, Ward -B, Block-8 in an extent of 0.0620 Hectares situated at South Muniyasamy Kovil Street, Ramanathapuram City by considering the petitioner's representation dated 26.06.2021 within the time stipulated by this Court.

2. According to the petitioner the property is situated in Survey No.58, Ward -B, Block-8 in an extent of 0.0620 Hectares situated at South Muniyasamy Kovil Street, Ramanathapuram City belongs to him and he gave representation before the respondents 1 and 2 dated 26.06.2021, but the same has not been considered by the respondents. Further this petitioner had already filed a writ petition before this Court in W.P(MD)No.18174 of 2020 seeking direction to survey his land and this Court by an order dated 10.12.2020 had allowed the petition and directed the officials of Ramanathapuram Municipality to fix boundary stones. On 08.04.2021, when officials of the Municipality came there to fix stones the third respondent and his



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family members abused the petitioner and his family members in filthy language and also restrained them from installing the fencing. Hence he has filed the present petition.

3. The learned counsel for the petitioner would submit that this Court had already passed order to measure the property and based on that order he has measured the property and when he tried to create fence over the property the third respondent and his family members prevented them from fencing the property . Hence he gave representation before the respondents 1 and 2 for providing adequate police protection and the same was not considered. Therefore in order to fence the property the police has to give protection and the petition may be allowed.

4. The learned counsel appearing for the third respondent contended that there is a dispute between the parties with regard to title and extent of the property. For deciding the rights of the parties the civil Court is the competent Court and now without deciding the title this petition is not maintainable. In the earlier petition the petitioner suppressed the fact and without impleading this respondent has got an order. The petitioner has not approached this Court with clean hands. Further he has also produced the judgment of the



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Hon'ble Apex Court in the case of ***P.R.Murlidharan Theertha Padar and Others .vs. Swami Dharmananada Theertha Padar and others*** reported in(2006) 4 SCC 501 and prayed that the petition may be dismissed.

5. The learned Additional Public Prosecutor appearing for the respondents 1 and 2 contended that already the representation of the petitioner dated 26.06.2021 was considered and the same was closed. He would further submit that petitioner did not appear for enquiry and thereafter enquired the matter and after enquiry the same was closed, hence the petition is liable to be dismissed.

6. Heard both sides and perused the materials available on record.

7. On perusal of the record, it is observed that earlier the petitioner had approached this Court for conducting survey and the same was allowed with condition that directing the second respondent therein to survey the property of the petitioner, after affording opportunity to the petitioner as well as the interested parties and the persons, who are likely to be affected. In case of issuance of patta, survey needs to be conducted and the said survey shall be



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photographed and videographed in the presence of the petitioner and the costs of Photograph and Videograph to be borne by the petitioner .

It is further observed that if the persons like the present petitioner, who are seeking to survey the land do not disclose the other persons, who are interested, they must file an affidavit that there are no third parties involved in the issue concerned and also there are no interested parties. In case, at a later point of time if the fact came to light that there is any interested parties, the decision taken by the authority in favour of the petitioner will stand automatically cancelled . It is seen that this Court has already passed conditional order. Now the petitioner has filed the present petition by impleading the third respondent as one of the party but in the earlier order the petitioner had not impleaded him as party. Since there is a dispute regarding title over the property without deciding the title it is not appropriate to order for police protection to erect the fence over the property.

8. Further the Hon'ble Apex Court in the case of ***P.R.Murlidharan Theertha Padar and Others .vs. Swami Dharmananada Theertha Padar and others*** reported in ***(2006) 4 SCC 501*** has held as follows:

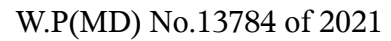
*"17. A writ petition under the guise of seeking a writ*



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*of mandamus directing the police authorities to give protection to a writ petitioner, cannot be made a forum for adjudicating on civil rights. It is one thing to approach the High Court, for issuance of such a writ on a plea that a particular party has not obeyed a decree or an order of injunction passed in favour of the writ petitioner, was deliberately flouting that decree or order and in spite of the petitioner applying for it, or that the police authorities are not giving him the needed protection in terms of the decree or order passed by a court with jurisdiction. But, it is quite another thing to seek a writ of mandamus directing protection in respect of property, status or right which remains to be adjudicated upon and when such an adjudication can only be got done in a properly instituted civil suit. It would be an abuse of process for a writ petitioner to approach the High Court under Article 226 of the Constitution seeking a writ of mandamus directing the police authorities to protect his claimed possession of a property without first establishing his possession in an appropriate civil court. The temptation to grant relief in cases of this nature should be resisted by the High Court. The wide jurisdiction under Article 226 of the Constitution would remain effective and meaningful only when it is exercised prudently and in appropriate situations”*

9. In view of the above said judgment and as discussed supra, this petitioner cannot seek any direction from this Court for police protection, hence the petition is liable to be dismissed.



**27.07.2023**

To

1. The Superintendent of Police  
Ramanathapuram District  
Ramanathapuram
2. The Inspector of Police  
Bazaar Police Station,  
Ramanathapuram District
3. The Additional Public Prosecutor  
Madurai Bench of Madras High Court  
Madurai.



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**P.DHANABAL, J.**

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